

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Eastern District of Texas Beaumont
Name (under which you were convicted): Vicki Starks-Fitts		Docket or Case No.: 1:12-cr-00119-MAC-2JH-4
Place of Confinement: FCI Tallahassee, 501 Capital Circle, NE, Tallahassee, FL 32301	Prisoner No.: 18614-078	
<div style="display: flex; justify-content: space-between;"> UNITED STATES OF AMERICA Movant (include name under which convicted): V. VICKI STARKS-FITTS </div>		

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MOTION

MAR 02 2015

1. (a) Name and location of court which entered the judgment of conviction you are challenging. DAVID J MALAND, CLERK
DEPUTY _____
- United States District Court
Eastern District of Texas
Beaumont Division

(b) Criminal docket or case number (if you know): 1:12-cr-00119-MAC-2JH-4

2. (a) Date of the judgment of conviction (if you know): 3/5/2014

(b) Date of sentencing: 3/5/2014

3. Length of sentence: 378 months imprisonment

4. Nature of crime (all counts):

Starks-Fitts was charged in a Criminal Information with One Count of Racketeering ("RICO"), in violation of 18 U.S.C. § 1962(c).

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☒

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐

No ☒

9. If you did appeal, answer the following:

(a) Name of court: U.S. Court of Appeals Fifth Circuit

(b) Docket or case number (if you know): 14-40625

(c) Result: Dismissed

(d) Date of result (if you know): 8/25/2014

(e) Citation to the case (if you know): U. S. v. Starks-Fitts, (No. 14-40625) (5th Cir. Aug. 25, 2014)

(f) Grounds raised:

N/A Out of Time appeal was dismissed. No briefs were filed.

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐

No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): N/A

(5) Grounds raised:

N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐

No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: N/A

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know):

(4) Nature of the proceeding: N/A

(5) Grounds raised:

N/A

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: N/A

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐

No ☒

(2) Second petition:

Yes ☐

No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

Attorney failed to advise or consult Starks-Fitts about a direct appeal. A Pro Se out of time appeal was dismissed.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Assistance of Counsel at Pretrial Proceedings

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel failed to:

- (1) Communicate with Starks-Fitts and provide information that she needed to assess the government's case-in-chief, including discovery and other evidence in order for her to make an informed decision of whether to proceed to trial or plead guilty. Counsel never gave copies of any documents to Starks-Fitts;
- (2) Conduct an adequate and independent pretrial investigation, instead of relying on the government's case file;
- (3) Interview any defense or government witnesses on behalf of Starks-Fitts;
- (4) Inform Starks-Fitts of the relevant circumstances and likely consequences of pleading guilty as opposed to proceeding to trial, including the maximum sentence if she was convicted at trial;
- (5) File substantive motions other than boiler plate motions off of his computer database;
- (6) Provide any information as to any affirmative defense that was available to Starks-Fitts if she proceeded to trial;
- (7) Negotiate a reasonable plea offer with the government on behalf of Starks-Fitts; and
- (8) Convey any government plea offer to Starks-Fitts.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

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- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Starks-Fitts's attorney failed to file a Notice of Appeal or a direct appeal.

GROUND TWO: Ineffective Assistance of Counsel at the Rearrangement Proceeding

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel failed to:

- (1) Explain and discuss the Rearrangement hearing and what would take place at that hearing prior to the proceeding;
- (2) Inform Starks-Fitts of the relevant circumstances and likely consequences of pleading guilty;
- (3) Review, discuss, explain and provide a copy of the written Plea Agreement to Starks-Fitts prior to the Rearrangement hearing; and
- (4) Appear personally at the Rearrangement hearing to advise Starks-Fitts of the Court's inquiries and colloquy. Counsel had a substitute stand in for him at the Rearrangement hearing who did not know anything about Starks-Fitts's case and could not give proper advise to her. In essence, she was abandoned by her attorney at the Rearrangement hearing.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:
N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:
N/A

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND THREE: Ineffective Assistance of Counsel at Sentencing

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel failed to:

- (1) Review, discuss or explain the Presentence Report ("PSR") to Starks-Fitts;
- (2) File PSR objections which Starks-Fitts requested that he file;
- (3) Object and argue for mitigation of Starks-Fitts's sentence;
- (4) Misinform Starks-Fitts that she would receive a reduction in her sentence pursuant to a downward departure motion by the government;
- (5) Argue that Starks-Fitts sentence was substantively unreasonable;

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- (6) Advise, inform and consult with Starks-Fitts regarding filing a direct appeal; and
(7) File a Notice of Appeal.

(b) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

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- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

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13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Grounds One, Two and Three. These grounds make claims of ineffective assistance of counsel, which is generally not properly raised on direct appeal. The proper remedy is a § 2255 Motion.

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

Steven Rocket Rosen, 440 Morton Street, Richmond, Texas 77469

(b) At the arraignment and plea:

Steven Rocket Rosen, 440 Morton Street, Richmond, Texas 77469

(c) At the trial:

Steven Rocket Rosen, 440 Morton Street, Richmond, Texas 77469

(d) At sentencing:

Steven Rocket Rosen, 440 Morton Street, Richmond, Texas 77469

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, Starks-Fitts respectfully requests that the Court grant the following relief:

Vacate her conviction and sentence to start anew; alternatively, grant an Evidentiary hearing to further prove her grounds set forth above, resolve facts in dispute, expand an incomplete record or any other relief to which this Court deems that she may be entitled.

Respectfully submitted,

Vicki Starks-Fitts

Vicki Starks-Fitts

Reg. No. 18614-078

FCI Tallahassee

501 Capital Circle, NE

Tallahassee, Florida 32301

Appearing *Pro se*

DECLARATION OF VICKI STARKS-FITTS

I, Vicki Starks-Fitts, declarant herein, declare and attest to the fact in the above and foregoing Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody to be true and correct to the best of my knowledge under the penalty of perjury pursuant to 28 U.S.C. § 1746.

Dated: Feb. 23, 2015

Vicki Starks-Fitts
Vicki Starks-Fitts